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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
THIRD APPELLATE DISTRICT  
(Sacramento)**

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In re GABRIEL W., a Person Coming Under  
the Juvenile Court Law.

C086470

THE PEOPLE,

(Super. Ct. No. JV138326)

Plaintiff and Respondent,

v.

GABRIEL W.,

Defendant and Appellant.

The minor, 16-year-old Gabriel W., contends the juvenile court (1) erred in making true findings at the May 2017 dispositional hearing on the amended original petition counts for receiving stolen property and robbery as the charges were for the same property and (2) erred in failing to compute his maximum time of confinement at the November 2017 dispositional hearing on the subsequent amended petition. The dispositional order on the amended original petition was entered on May 3, 2017.

Gabriel W. did not file a notice of appeal as to the May 3, 2017 dispositional order. Accordingly, we do not have jurisdiction to consider an appeal of that order. The dispositional order on the subsequent amended petition was filed on November 16, 2017. Because the juvenile court failed to state the minor's maximum term of confinement, we will remand the matter for the juvenile court to determine the minor's maximum term of confinement.

### **PROCEDURAL BACKGROUND<sup>1</sup>**

On January 24, 2017, an amended juvenile wardship petition (Welf. & Inst. Code, § 602, subd. (a))<sup>2</sup> (January 2017 petition) alleged the minor committed: robbery (Pen. Code, § 211—count one); receiving stolen property (Pen. Code, § 496, subd. (a)—count two); and three counts of second degree burglary (Pen. Code, § 459—counts three through five). On May 3, 2017, following a contested jurisdictional hearing, the juvenile court found counts one through four true and sustained the amended petition as to those counts. The juvenile court also dismissed count five for insufficient evidence. The dispositional hearing was held the same day. The juvenile court declared the minor a ward of the court and ordered him to serve 180 days in juvenile hall with 124 days of preservice custody credits; and it ordered that, upon completion of that service, he was to be committed to the care and custody of his parents under supervision of the probation officer. At the May 3, 2017 dispositional hearing, following pronouncement of the judgment, the juvenile court informed the minor of his right to appeal the judgment and that he had 60 days to do so. The minor did not file a notice of appeal from the May 3, 2017 dispositional order.

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<sup>1</sup> The substantive facts underlying these sustained petitions are not relevant to our disposition on appeal and are therefore not recounted.

<sup>2</sup> Undesignated statutory references are to the Welfare and Institutions Code.

On June 21, 2017, an amended subsequent juvenile wardship petition (§ 602, subd. (a)) (June 2017 petition) alleged that the minor committed: carjacking (Pen. Code, § 215, subd. (a)—count one); robbery (Pen. Code, § 211—count two); assault by means of force likely to produce great bodily injury (Pen. Code, § 245, subd. (a)(4)—count three); and battery with serious bodily injury (Pen. Code, § 243, subd. (d)—count four) with allegations that he personally inflicted great bodily injury in counts one through three (Pen. Code, § 12022.7). On November 16, 2017, following a contested jurisdictional hearing, the juvenile court found all counts to be true, but found the great bodily injury enhancement allegations to be untrue. The juvenile court sustained the petition. At the November 30, 2017 dispositional hearing, the juvenile court continued the minor's wardship and ordered him to serve 179 days in juvenile hall with 179 days of preservice credit; and it ordered that, upon completion of that service, he was to remain in juvenile hall in the care and custody of the probation officer pending placement in an out-of-state facility.

On January 29, 2018, the minor filed a timely notice of appeal from the November 30, 2017 dispositional order. The notice of appeal states the minor is appealing solely from the order entered on November 30, 2017.

## **DISCUSSION**

### **1.0 The January 2017 Petition**

The minor contends the true finding for receiving stolen property in the sustained January 2017 petition must be reversed because that count (count two) was necessarily included in the robbery count (count one), which was also sustained. The People contend this claim is untimely as the minor did not file a notice of appeal as to the May 2017 dispositional order. The minor acknowledges he did not file a timely notice of appeal of this dispositional order. Relying on *People v. Scott* (1994) 9 Cal.4th 331, 354, the minor contends, however, that this claim is cognizable on direct appeal, as it is akin to an

unauthorized sentence which can be raised at any time. The minor's argument misapplies *Scott*. Generally, only claims properly raised and preserved in the trial court are subject to review on appeal. If they are not so raised, the issue is forfeited. The "unauthorized sentence" rule of *Scott* is a limited exception to that rule, allowing a defendant to challenge an unauthorized sentence on appeal even if the sentence was not properly objected to in the trial court. (*People v. Hester* (2000) 22 Cal.4th 290, 295; see *Scott*, *supra*, 9 Cal.4th at p. 354.) Nothing in *Scott* confers jurisdiction on the appellate court to address an issue not timely raised in a notice of appeal. (*In re G.C.* (2018) 27 Cal.App.5th 110, 116, review granted S252057, Dec. 19, 2018.)

“ ‘It is settled that the right of appeal is statutory and that a judgment or order is not appealable unless expressly made so by statute.’ ” (*People v. Mazurette* (2001) 24 Cal.4th 789, 792.) The judgments or orders of a juvenile court, which are appealable, are restricted to those enumerated in section 800. (*In re Henry S.* (2006) 140 Cal.App.4th 248, 255.) Section 800, subdivision (a) provides in relevant part that “[a] judgment in a proceeding under Section 601 or 602 may be appealed from, by the minor, in the same manner as any final judgment, and any subsequent order may be appealed from, by the minor, as from an order after judgment.” The appealable “judgment” in a juvenile delinquency proceeding is the dispositional order. (*In re Henry S.*, *supra*, at p. 255; *In re James J.* (1986) 187 Cal.App.3d 1339, 1342; *In re Melvin S.* (1976) 59 Cal.App.3d 898, 900-901.)

“[A] notice of appeal must be filed within 60 days after the rendition of the judgment or the making of the order being appealed.” (Cal. Rules of Court, rule 8.406(a)(1).) “ ‘[T]he filing of a timely notice of appeal is a jurisdictional prerequisite. “Unless the notice is actually or constructively filed within the appropriate filing period, an appellate court is without jurisdiction to determine the merits of the appeal and must dismiss the appeal.” ’ ” (*People v. Denham* (2014) 222 Cal.App.4th 1210, 1213, quoting

*Silverbrand v. County of Los Angeles* (2009) 46 Cal.4th 106, 113; see *In re Gary R.* (1976) 56 Cal.App.3d 850, 853.) The California Supreme Court has “steadfastly adhered to the fundamental precept that the timely filing of an appropriate notice of appeal or its legal equivalent is an absolute prerequisite to the exercise of appellate jurisdiction.” (*Hollister Convalescent Hosp., Inc. v. Rico* (1975) 15 Cal.3d 660, 670.)

Here, the minor seeks to appeal the May 3, 2017 dispositional order. At that time, the minor was expressly advised of his right to appeal. As the minor did not appeal the May 3, 2017 dispositional order, jurisdiction does not lie to consider a challenge to it. The minor’s claims as to that dispositional order are not properly before us and will be disregarded.<sup>3</sup> (*Hollister Convalescent Hosp., Inc. v. Rico, supra*, 15 Cal.3d at p. 674; *People v. Denham, supra*, 222 Cal.App.4th at p. 1214.)

## **2.0 The June 2017 Petition**

The minor also contends the juvenile court erred in failing to set the maximum term of confinement in the November 30, 2017 dispositional order when he was removed from the custody of his parents. The People properly concede this point. When a minor is removed from the custody of his or her parent or guardian as a result of an order of wardship made pursuant to section 602, “the juvenile court is required to indicate the maximum period of physical confinement.” (*In re Julian R.* (2009) 47 Cal.4th 487, 491, citing § 726, former subd. (c) [now (d)].) “Because, in this case, the juvenile court failed to exercise its discretion to set a maximum term of physical confinement based on the facts and circumstances of the case, we shall remand the matter to permit the court to make an informed determination of [the minor’s] maximum term of confinement.” (*In re Sean W.* (2005) 127 Cal.App.4th 1177, 1188-1189.)

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<sup>3</sup> Although this court lacks jurisdiction to grant relief on direct appeal from a different order, nothing in this opinion or disposition precludes defendant from seeking habeas relief in the trial court. (See *In re Huffman* (1986) 42 Cal.3d 552, 555.)

## **DISPOSITION**

This court lacks jurisdiction to consider the minor's claims as to the May 2017 dispositional order. The matter is remanded to the juvenile court with directions to exercise its discretion in setting the minor's maximum term of confinement, pursuant to section 731, subdivision (c), as to the November 30, 2017 dispositional order.

BUTZ, Acting P. J.

We concur:

MAURO, J.

DUARTE, J.